IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1984 OF 2004

Mr. Prakash Kisan Fulore & Ors. ..Petitioners

V/s.

The State of Maharashtra ..Respondent

Shri.A.R. Pitale for the Petitioners.
Shri. K.V.Saste A.P.P. for the State/Respondent.

CORAM : A. S.OKA, J.
DATED : JUNE 09, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The challenged in this Petition is to the order dated 1st September, 2004 by which the application for discharge was made by the Petitioners(Accused) has been rejected by the learned Additional Sessions Judge.

2. The case of the Petitioners is that initially an offence was registered under Sections 326, 323, 363 read with Section 34 of the Indian Penal Code and later on Section 307 of the said Code was added. The prayer made in the application for discharge is that the Petitioners may be discharged from the alleged offence under sections 307 of the Indian Penal Code or in the alternative that the case may be sent back to

the learned Judicial Magistrate as Section 307 of the Indian Penal Code is not attracted.

3. Shri. Pitale, learned Counsel for the Petitoners submitted that even if the prosecution story is correct, Section 307 of the Indian Penal Code will not be attracted. He placed reliance on medical certificates annexed to the Petition. He has placed reliance on order passed by this Court by which the Petitioners were ordered to be enlarged on bail. He submitted that the case ought to have been sent back to the Judicial Magistrate for trial as Section 307 of the Indian Penal Code cannot be attracted. Learned A.P.P. has supported the impugned judgment and order.

4. In my view learned Additional Sessions Judge has rightly held that the controversy as regards the nature and extent of injuries on the person of the victim is a matter for trial and proper conclusion cannot be drawn only at the time of trial. The learned Judge rightly held that prima facie or the tentative findings recorded while deciding the application for bail cannot bind the Trial Court while deciding the application for discharge, or at the time of trial and while considering the application for discharge the material on record will have to be

considered independently.

5. In my view no interference is possible with the impugned Judgment and Order. Petition is rejected. All questions on merits are expressedly kept open to be decided at the time of trial.

JUDGE